

Ten Minute Supervisor #10

Fact Sheet: *Cost-share for District Supervisors & Staff*

Can conservation district supervisors and staff participate in district cost-share programs? The short answer is yes, but that doesn't mean they should. There are some legal and policy issues that districts should carefully consider.

Who is a municipal officer?

Chapter 42.23 RCW contains the Code of Ethics for Municipal Officers. A conservation district is a "municipality" for the purposes of RCW 42.23.

A municipal officer includes all elected and appointed officers of a conservation district, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer.

Clearly, elected and appointed board supervisors meet the definition of a municipal officer. We know from an audit finding that associate supervisors are also municipal officers. And many employees act as deputies and assistants to the board, so many conservation district employees are municipal officers.

According to RCW 42.23.030, municipal officers are prohibited from being beneficially interested in a contract (see sidebar). Contract is defined in RCW 42.23.020 as "...any contract, sale, lease or purchase."

"Beneficial interest" has been defined by the courts to include financial interests.

There is a general exception to the prohibition of having a beneficial interest. This is explained in RCW 42.23.030: *"This section shall not apply in the following cases...The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month."*

RCW 42.23.030: "No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein."

This means it is not a violation of the Code of Ethics for Municipal Officers if a municipal officer receives \$1,500 or less in any calendar month. This \$1,500 per month exception applies to the total of all contracts, sales, leases and purchases between you and the conservation district. This is not an average amount – you cannot exceed \$1,500 in any month.

Note that the \$1,500 per month exemption is the Legislature's way of striking a balance between public responsibility and ensuring that individuals may serve their communities.

If you are a district board supervisor...

Chapter 89.08.220(4) RCW authorizes a conservation district to furnish financial aid to land occupiers. A few years ago the Conservation District Law was amended to say, in part, *"For purposes of this subsection only, land occupiers who are also district supervisors are not subject to the provisions of RCW 42.23.030."*

So for conservation district supervisors only, the limitations of the Code of Ethics for Municipal Officers do not apply for financial programs offered by the conservation district. It is not a violation of RCW 42.23 for a conservation district supervisor to receive more than \$1,500 per month in financial aid from the conservation district.

Ten Minute Supervisor #10

If you are not a district supervisor...

The exemption granted to district supervisors in RCW 89.08.220(4) does not apply to associate supervisors, district staff or any other municipal officers. Only the elected and appointed supervisors are exempted from this provision of the Code of Ethics. This means district employees may receive up to \$1,500 – but no more – in a calendar month without violating the Code of Ethics.

Commission staff have fielded some questions about delegation of authority as a way to shield individuals from the restrictions of RCW 42.23. The courts have spoken to this issue and have directed that a municipal officer cannot avoid the dictates of RCW 42.23.030 by delegating contract management duties to a subordinate.

Similarly, the contract need not be solely with a district employee for RCW 42.23 to apply. A contracting party includes any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.

Even though you can, should you?

Even though it is legal for conservation district supervisors, associates and staff to participate in cost-share programs (at least to some degree), should you? From the outside looking in, such participation can look like you are receiving preferential treatment.

In addition, the Code of Ethics also provides more generally that “no municipal officer may use his or her position to secure special privileges or exemptions for himself, herself or others.” RCW 42.23.070. Given the broad language of both this provision and the beneficial interest provision, it is recommended that districts take measures to protect their employees from problems arising from the Code of Ethics.

How to prevent problems...

Your conservation district can adopt a policy prohibiting conservation district staff and associate supervisors from participating in district cost-share programs. Such a policy would help eliminate problems with appearances of self-dealing with public funds.

If a district chooses to allow conservation district staff to participate in cost-sharing, it should adopt a procedure to fairly evaluate and prioritize all cost-share requests. This can help you avoid charges of preferential or special treatment. For example, staff who will receive cost-share should be screened as much as possible from any involvement with their particular contract. It is particularly important that district staff have no involvement in the district’s decision to award the contract. However, if the district employee’s cost-share rises above the statutory maximum of \$1,500 per month, such measures – while helpful – will not shield the employee from a violation.

In addition, even though elected and appointed district supervisors are exempted from RCW 42.23.030, these supervisors may be able to protect themselves from appearances of self-dealing by a similar screening process and by not voting on their own contracts. (This is known as recusing oneself from a vote.)

One of the most common pitfalls is awarding cost-share to people “in the know” before others have a chance to participate. To avoid this, districts should market their cost-share opportunities as widely as possible, and test each cost-share application against the district’s conservation priorities in its annual and long-range plans.

Ten Minute Supervisor #10

This is not legal advice...

Although we make reference to the relevant provisions of the Revised Code of Washington and court cases, the information contained herein cannot be construed as legal advice. For questions and concerns involving the interpretation and application of law, districts, supervisors and staff should seek qualified legal advice. This is especially true for this issue as potential violations of the Code of Ethics are subject to the penalty provisions of the statute.

References to more information...

1. RCW 42.23, available through <http://www.leg.wa.gov/>
2. RCW 89.08.220(4), available through <http://www.leg.wa.gov/>
3. Auditing finding 60060, available at <http://www.sao.wa.gov/reports/findings/60060.doc>.
4. 82 Wn. App. 865, BARRY v. JOHNS, available at <http://www.mrsc.org/mc/courts/appellate/82wnapp/82wnapp865.htm>
5. 93 Wn. App. 127, CITY OF RAYMOND v. RUNYON, available at <http://www.mrsc.org/mc/courts/appellate/93wnapp/93wnapp127.htm>
6. Municipal Research & Services Center of Washington, article on Conflicts of Interest, available at <http://www.mrsc.org/Subjects/Legal/conflict/conflict.aspx>